

Montana Legal Services Association

Provide, protect and enhance access to justice.

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FILED

MLSA

/24/2017

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

March 24, 2017

FILED

MAR 24 2017

Mr. Ed Smith
Clerk of Montana Supreme Court
215 North Sanders, Room 323
Helena, MT 59601

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Re: *In re the Matter of the Rules of Appellate Procedure* (No. AF 07-0016)
Comments on Proposed Amendment to Rule 6 of Montana Rules of Appellate Procedure

Dear Mr. Smith:

Montana Legal Services Association (MLSA) serves individuals who lack resources to retain private counsel to represent their interests. On behalf of the community served by MLSA, we offer the following comments on the proposed change to Rule 6 that limits appeals to the Montana Supreme Court from judgments from courts of limited jurisdiction that are courts of record.

First, the proposed rule change may work against persons in poverty. For example, nearly all residential eviction cases commenced by landlords are filed in justice court and justices of the peace are not required to be licensed attorneys. The district courts in judicial districts where the inferior courts of limited jurisdiction are courts of record are among the busiest and overburdened judicial districts in Montana. We have concerns about the resources available to the district courts acting in an appellate capacity. The Montana Supreme Court has ultimate authority over issues of law, and is structured to act in an appellate capacity. The community served by MLSA should not be deprived of the opportunity to appeal to the Montana Supreme Court as a matter of right.

Second, assuming Rule 6 is amended to limit access to the Montana Supreme Court in appeals from courts of limited jurisdiction that are courts of record, the proposal to only allow for petitioning for a writ of certiorari or other writ does not provide a clear procedural route to seek review. Writs of certiorari are covered by Mont. Code Ann., Tit. 27, Ch. 25, but the statutes fail to provide specific criteria and simply allow for equitable relief when there is no plain, speedy, or adequate remedy from the action of a lower tribunal. Mont. Code Ann. § 27-25-102(2). Instead of only allowing review by seeking a writ without specifying any particular

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criteria for obtaining a writ, the Court should adopt a rule allowing for review in the Court's discretion based upon specific criteria. For example, the Washington Supreme Court, pursuant to RAP 13.4(b), limits review from a lower appellate court as follows:

Considerations Governing Acceptance of Review. A petition for review will be accepted by the Supreme Court only:

- (1) If the decision of the [lower appellate court] is in conflict with a Decision of the Supreme Court; or

* * *

- (2) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

- (3) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Limiting review to writs would likely deprive *pro se* litigants of any opportunity to seek review. Instead of utilizing writs to seek review, adoption of a rule with specific criteria would better serve litigants seeking review and would better serve the community MLSA typically represents.

Third, the proposed amendment would expand the right of direct appeal to the Montana Supreme Court in some circumstances. For example, Local Rule 16 for Justice Court of Yellowstone County (attached) does not allow for an appeal to district court of any monetary judgment unless the amount in controversy exceeds \$1,000. So the proposed rule would seem to authorize a direct appeal to the Supreme Court from a Yellowstone County Justice Court judgment where the amount in controversy is less than \$1,000. Appeals from municipal courts may also be limited by ordinance to an amount in controversy that exceeds \$200. *See* Mont. Code Ann. § 25-30-108. While it may be beneficial for the community served by MLSA to have a right of direct appeal to the Supreme Court for judgments in an amount less than the jurisdictional limit for an appeal to district court, this may not be the intended result of the proposed rule change.

Thank you for the opportunity to submit comments. If you have any questions about this letter, please feel free to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael G. Black', with a long horizontal flourish extending to the right.

Michael G. Black

LOCAL RULES OF PRACTICE OF THE
JUSTICE COURT OF YELLOWSTONE
COUNTY, STATE OF MONTANA
A JUSTICE COURT OF RECORD
[Effective November 6, 2015]

PREFACE

The following Rules of Practice supplement the Justice and City Court Civil Rules of Civil Procedure, the Uniform Justice and City Court Rules and any applicable statutes as provided in the Montana Code Annotated (MCA). Any conflict shall be controlled by the Justice and City Court Civil Rules, Uniform Justice and City Court Rules or applicable statutes.

RULE 1

DEPARTMENTS

The Yellowstone County Justice Court is divided into two departments. The departments assigned to individual judges and their successors are as follows:

Department 1 – Judge David Carter

Department 2 – Judge Pedro Hernandez

RULE 2

DIVISION OF BUSINESS

All cases shall be assigned using Full Court to a department randomly in equal numbers between the two departments. Except for consolidation and disqualification, no case shall be reassigned to another department at the request of a party.

RULE 3

CONSOLIDATION

(1) Traffic and criminal violations filed against the same defendant arising out of the same stop, arrest, or transaction and assigned by Full Court to different departments or in the same department with different case numbers, shall be consolidated. The consolidated case shall be heard and tried before the judge presiding in the department having the earliest docket number assigned with criminal (CR) cases having priority.

(2) A motion to consolidate cases (civil or criminal), assigned to different departments, or assigned to the same department, shall be filed in each case. The motion shall be heard by the judge presiding in the department having the earliest docket number assigned. If consolidated, the cases shall be tried before the judge presiding in the department having the earliest docket assigned.

(3) In civil actions the court shall follow Rule 42, of the Montana Rules of Civil Procedure in consolidating actions involving a common question of law or fact.

Rule 16
APPEALS

The Montana Uniform Municipal Court Rules of Appeal to the District Court, codified in Title 25, chapter 30, shall apply to all appeals to the district court. Appeals are limited in the following cases:

(1) In civil causes for a monetary judgment:

(a) That the minimum amount in controversy shall exceed \$1,000.00 before the district court has jurisdiction to hear the appeal. There is no appeal from a judgment by default, except as provided for under Rule 4(f), Montana Uniform Municipal Court Rules of Appeal to the District Court.

(b) Upon failure to timely file the required undertaking within 10 days after filing of the notice of appeal the appeal shall be dismissed by the court.

(2) In criminal causes:

(a) That the minimum amount in controversy, fine or restitution shall exceed \$300.00 before the district court has jurisdiction to hear the appeal, except if the judgment includes incarceration, no minimum fine may be required for appeal.

(b) Subject to the provisions of sections 46-12-204(3) and 46-17-203(2)(b), MCA, a plea of guilty or nolo contendere waives the right of appeal to the district court.

(3) A notice of appeal limited by the requirements of subsections (1) or (2) shall be dismissed by the court.

Rule 17

FILING OF PAPERS

(1) The office of the justice court clerk shall be deemed always open for the purpose of filing by facsimile or other electronic means any pleading, or other paper, of issuing and returning process and final process, and of making and all interlocutory motions, orders and rules.

(2) Rule 5 (e), M.R.Civ.P. shall govern the filing in justice court all filings by facsimile or other electronic means.

(3) §25-3-501, MCA shall govern service of a telephonic or telegraphic copy.

(4) The definition of "a day" is defined under §1-1-301(1), MCA.

Rule 18

**APPLICABILITY OF UNIFORM DISTRICT COURT RULES
AND
MONTANA RULES OF CIVIL PROCEDURE**